

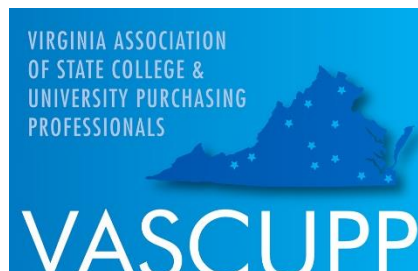


# Request for Proposal

## **RFP# FDC-1198**

**Online Training Services Provider**

**March 22, 2024**



**DEADLINE FOR SUBMISSION OF QUESTIONS: Thursday, April 19, 2024 @ 5:00 p.m.**

Name	Organization	E-mail Address
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# ***REQUEST FOR PROPOSAL***

## ***RFP# FDC-1198***

**Issue Date:** March 22, 2024  
**Title:** Online Training Services Provider  
**Issuing Agency:** Commonwealth of Virginia  
James Madison University  
Procurement Services MSC 5720  
752 Ott Street, Wine Price Building  
First Floor, Suite 1023  
Harrisonburg, VA 22807

**Period of Contract:** From Date of Award Through One Year (Renewable)

**Sealed Proposals Will Be Received Until 2:00 PM on April 25, 2024 for Furnishing the Services Described Herein.**

*SEALED PROPOSALS MAY BE MAILED, EXPRESS MAILED, OR HAND DELIVERED DIRECTLY TO THE ISSUING AGENCY SHOWN ABOVE.*

All Inquiries for Information and Clarification Should Be Directed To: Doug Chester, Buyer Senior, Procurement Services, [chestefd@jmu.edu](mailto:chestefd@jmu.edu); 540-568-4272; (Fax) 540-568-7935 not later than five business days before the proposal closing date.

**NOTE: THE SIGNED PROPOSAL AND ALL ATTACHMENTS SHALL BE RETURNED.**

In compliance with this Request for Proposal and to all the conditions imposed herein, the undersigned offers and agrees to furnish the goods/services in accordance with the attached signed proposal or as mutually agreed upon by subsequent negotiation.

Name and Address of Firm:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
(Signature in Ink)

Name: \_\_\_\_\_  
(Please Print)

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Web Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Fax #: \_\_\_\_\_

ACKNOWLEDGE RECEIPT OF ADDENDUM: #1\_\_\_\_\_ #2\_\_\_\_\_ #3\_\_\_\_\_ #4\_\_\_\_\_ #5\_\_\_\_\_ (please initial)

SMALL, WOMAN OR MINORITY OWNED BUSINESS:

☐ YES; ☐ NO; *IF YES* ⇒ ☐ SMALL; ☐ WOMAN; ☐ MINORITY ***IF MINORITY:*** ☐ AA; ☐ HA; ☐ AsA; ☐ NW; ☐ Micro

**Note:** This public body does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, § 2.2-4343.1 or against an offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

# ***REQUEST FOR PROPOSAL***

***RFP # FDC-1198***

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## **I. PURPOSE**

The purpose of this Request for Proposal (RFP) is to solicit sealed proposals from qualified sources to enter into a contract with one or more qualified contractors to provide a hosted system for Prevention of Sexual Violence and Substance Abuse, to include Title IX training for students and employees, as outlined herein for James Madison University (JMU), an agency of the Commonwealth of Virginia. Initial contract shall be for one (1) year with an option to renew for four (4) additional one-year periods.

## **II. BACKGROUND**

James Madison University (JMU) is a comprehensive public institution in Harrisonburg, Virginia with an enrollment of approximately 22,000 students and approximately 4,000 faculty and staff. There are over 600 individual departments on campus that support seven (7) academic divisions. The University offers over 120 majors, minors, and concentrations. Further information about the University can be found at the following website: [www.jmu.edu](http://www.jmu.edu).

## **III. SMALL, WOMAN-OWNED AND MINORITY PARTICIPATION**

It is the policy of the Commonwealth of Virginia to contribute to the establishment, preservation, and strengthening of small businesses and businesses owned by women and minorities, and to encourage their participation in State procurement activities. The Commonwealth encourages contractors to provide for the participation of small businesses and businesses owned by women and minorities through partnerships, joint ventures, subcontracts, and other contractual opportunities. Attachment B contains information on reporting spend data with subcontractors.

## **IV. STATEMENT OF NEEDS**

The Contractor shall furnish all labor, materials, equipment, supervision, etc. to provide a hosted system for Prevention of Sexual Violence and Substance Abuse, along with discrimination and harassment training for supervisors and members of the campus community, as stated in the Statement of Needs.

The University seeks the services of a contractor to provide an integrated and comprehensive product or suite of products that includes: Web-based or on-line education program on issues of sexual assault, consent, relationship violence, stalking, and bystander intervention in compliance with the Department of Education, Campus SaVE act, and Title IX Federal prevention education requirements and alcohol prevention, alcohol use, underage drinking, binge drinking, and risk reduction to help moderate student drinking and associated behaviors. Compliance and knowledge of Title VII to address all forms of discrimination and harassment should be addressed in the training. The solution should address both student and employee training.

In addition to full capability solutions, the University may consider proposals limited to a robust and fully compliant Title IX solution.

### **A. Hosted System Features:**

1. A web-based, browser agnostic system. Describe how your proposed solution meets this requested feature.

2. A system that is a complete, commercial-off-the-shelf (COTS) secure hosted solution currently available for purchase by Higher Education Institutions. Describe how your proposed solution is a COTS solution.
3. A system that is an integrated and comprehensive product or suite of products for students and employees that includes the following criteria:
  - a. An internet-based educational program addressing sexual assault, consent, relationship violence, stalking, and bystander intervention, aligning with the mandates of the Department of Education, Campus SaVE Act, and Title IX Federal regulations for prevention education. Describe how your proposed solution fulfills this essential criterion.
  - b. An internet-based education program that explores the issues of alcohol prevention, alcohol use, underage drinking, binge drinking, and risk reduction to help moderate student drinking and associated behaviors. Describe how your proposed solution addresses these issues.
  - c. An internet-based education program on issues of discrimination, harassment and retaliation in compliance with the Office of Civil Rights and Title VII and Civil Right Act of 1964. Describe how your proposed solution addresses these issues.
  - d. Describe how your proposed solution addresses pre and post matriculation program data that provides anonymous feedback to help students assess and modify their own consumption habits, and provides administrators data comparison to evaluate the educational program effectiveness.
  - e. Describe how your proposed solution addresses programs or intervention tools available for use as sanctions for university alcohol policy violations, programs for targeted populations (e.g., Greek Life, athletes, parents, etc.), and programs covering issues of use of other drugs, if any.
  - f. Describe how your proposed solution takes into consideration issues regarding gender, sexual orientation and possibly race.
  - g. Specify how your proposed solution integrates with Shibboleth, Okta, or Active Directory for Authentication. Describe use of LDAP(S) for authentication and/or authorization and how this is accomplished in the proposed solution.
  - h. Describe how your proposed solution addresses compliance with the Americans with Disabilities Act (ADA), including but not limited to accessibility for the hearing and visually impaired.
  - i. Explain how your proposed solution addresses compelled viewing so that the user cannot skip ahead, and how it also includes quizzes or surveys to be completed at end of each module and/or end of training.
  - j. This training tool must comply with Title IX of the Education Amendments Act of 1972, the Violence Against Women Reauthorization Act of 2013, Campus Sexual Violence Act of 2013, Regulations under the Violence Against Women Reauthorization Act, and any future changes in the Federal and State law before each training period. Describe how your proposed solution complies with this criterion.

- k. This mandatory training must comply with the Office of Civil Rights and Title VII and Civil Rights act of 1964. Describe how your proposed solution complies with this criterion.
- l. Detail your proposed solution's access to social norming and normed/national data.
- m. Describe your proposed solution's access to additional resources such as students in distress and substance abuse (drugs).
- n. Describe your proposed solution's access to best practices research and advisory support.
- o. Explain how your proposed solution is user friendly and intuitively obvious to novice users.
- p. Describe your proposed solution's "Help Desk" function for users that may experience technical difficulties.
- q. Describe the content updating process of your proposed solution and the capability to be updated every semester, prior to each training period at no additional cost.
- r. Detail your proposed solution's ability to update user information within one week of the University submitting request and information.
- s. Detail your proposed solution's reporting features that have, but are not limited to, names of users, dates and times of completion, number of users, number of times used, and required users who did not complete the training.
- t. Describe your proposed solution's ability for university administrators to have immediate and direct access to tracking information. Also, describe how your proposed solution gives administrators the ability to track training completion and analyze data from responses.
- u. Describe your proposed solution's process of providing data reports based on student responses and normed/national data, providing sample reports, including but not limited to survey availability, pre- and post-quiz or testing results, and names of persons completing courses or modules, etc.
- v. Detail your proposed solution's user feedback forms that are to be required for each user during each training session.
- w. Detail your proposed solutions' ability to respond to user questions within one (1) business day.
- x. Describe your proposed solution's ability to allow users to be able to save sessions (or "pause and return") for later use.
- y. Describe how your firm provides marketing materials for university use on campus and online at no additional cost.
- z. Describe the data, formats, and services that are provided to import data from existing systems into your proposed solution.

- aa. Describe end-of-contract transition support to assure continuity of service and smooth transition between contractors. What data, formats, and services are provided, and does this include user information with date and time of completion?

B. IT/Support and Implementation criteria

1. Detail your proposed solution's IT support capability, which should be 24/7/365.
2. Detail your proposed solution's system reliability, which should be no more than 1% down-time; provide your down-time statistics over the most recent 12-month period.
3. Describe your proposed solution's hosting capabilities and server capacity to accommodate up to 14,000 additional simultaneous users, and describe volume thresholds that may impact your hosting and support capacity.
4. Detail your proposed solution's initial and ongoing training and support as well as ongoing system maintenance and upgrades.
5. Detail scenarios for university staffing and skill sets desired to support a rapid implementation timeline.
6. Describe your proposed solution's data retention policy, which must be maintained and retrievable for ten years after contract ends, pursuant to federal legal requirements.
7. Provide a projected timeline after potential contract award for rapid implementation of the proposed solution, and include a Gantt chart, if possible.
8. Describe your proposed solution's customization options to include James Madison University brand, resources, and policies

C. Approach and Methodology - General

1. Describe how your proposed solution fulfills the RFP requirements for both students and employees.
2. Describe how programs or services would assist the University in achievement of compliance with Department of Education, Campus SaVE act, and Title IX Federal prevention education requirements.
3. Identify all components and functionality of modules currently available through the Offeror's hosted solution, including all products that are available off-site as printed materials or e-version.
4. Provide information on awards, professional recognitions, and metrics that assess performance relevant to your proposed solution, particularly 3<sup>rd</sup> party independent ratings or data derived from client use of proposed solution.

D. Approach and Methodology – Legislation and Regulation Compliance

1. Describe how the proposed solution complies with current and continuously evolving legislation and regulations.
2. Describe compliance reporting features for your proposed solution.

E. Options – Current and Future

1. Describe optional modules related to the proposed solution, not already mentioned.

F. Documentation

1. Complete and return Attachment F (Higher Education Cloud Vendor Assessment Tool) with your proposal, as per item V.A.1.b. submission instructions below.
2. Submit a completed VPAT - Voluntary Product Accessibility Template.

## V. PROPOSAL PREPARATION AND SUBMISSION

A. GENERAL INSTRUCTIONS

**To ensure timely and adequate consideration of your proposal, offerors are to limit all contact, whether verbal or written, pertaining to this RFP to the James Madison University Procurement Office for the duration of this Proposal process. Failure to do so may jeopardize further consideration of Offeror's proposal.**

1. RFP Response: In order to be considered for selection, the **Offeror shall submit a complete response to this RFP**; and shall submit to the issuing Purchasing Agency:
  - a. **One (1) original and six (6) copies** of the entire proposal, INCLUDING ALL ATTACHMENTS. Any proprietary information should be clearly marked in accordance with 3.f. below.
  - b. **One (1) electronic copy in WORD format or searchable PDF (flash drive)** of the entire proposal, INCLUDING ALL ATTACHMENTS. **Return HECVAT Attachment F with the electronic copy as a separate Excel file.** Any proprietary information should be clearly marked in accordance with 3.f. below.
  - c. Should the proposal contain **proprietary information**, provide **one (1) redacted hard copy and one (1) redacted electronic copy** of the proposal and all attachments with **proprietary portions removed or blacked out**. This copy should be clearly marked “Redacted Copy” on the front cover.

The classification of an entire proposal document, line-item prices, and/or total proposal prices as proprietary or trade secrets is not acceptable. JMU shall not be responsible for the Contractor's failure to exclude proprietary information from this redacted copy.

No other distribution of the proposal shall be made by the Offeror.

2. The version of the solicitation issued by JMU Procurement Services, as amended by an addendum, is the mandatory controlling version of the document. Any modification of, or additions to, the solicitation by the Offeror shall not modify the official version of the solicitation issued by JMU Procurement services unless accepted in writing by the University. Such modifications or additions to the solicitation by the Offeror may be cause for rejection of the proposal; however, JMU reserves the right to decide, on a case-by-case basis in its sole discretion, whether to reject such a proposal. If the modification or additions are not identified until after the award of the contract, the controlling version of

the solicitation document shall still be the official state form issued by Procurement Services.

### 3. Proposal Preparation

- a. Proposals shall be signed by an authorized representative of the Offeror. All information requested should be submitted. Failure to submit all information requested may result in the purchasing agency requiring prompt submissions of missing information and/or giving a lowered evaluation of the proposal. Proposals which are substantially incomplete or lack key information may be rejected by the purchasing agency. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation.
- b. Proposals shall be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of content.
- c. Proposals should be organized in the order in which the requirements are presented in the RFP. All pages of the proposal should be numbered. Each paragraph in the proposal should reference the paragraph number of the corresponding section of the RFP. It is also helpful to cite the paragraph number, sub letter, and repeat the text of the requirement as it appears in the RFP. If a response covers more than one page, the paragraph number and sub letter should be repeated at the top of the next page. The proposal should contain a table of contents which cross references the RFP requirements. Information which the offeror desires to present that does not fall within any of the requirements of the RFP should be inserted at the appropriate place or be attached at the end of the proposal and designated as additional material. Proposals that are not organized in this manner risk elimination from consideration if the evaluators are unable to find where the RFP requirements are specifically addressed.
- d. As used in this RFP, the terms “must”, “shall”, “should” and “may” identify the criticality of requirements. “Must” and “shall” identify requirements whose absence will have a major negative impact on the suitability of the proposed solution. Items labeled as “should” or “may” are highly desirable, although their absence will not have a large impact and would be useful, but are not necessary. Depending on the overall response to the RFP, some individual “must” and “shall” items may not be fully satisfied, but it is the intent to satisfy most, if not all, “must” and “shall” requirements. The inability of an offeror to satisfy a “must” or “shall” requirement does not automatically remove that offeror from consideration; however, it may seriously affect the overall rating of the offeror’s proposal.
- e. Each copy of the proposal should be bound or contained in a single volume where practical. All documentation submitted with the proposal should be contained in that single volume.
- f. Ownership of all data, materials and documentation originated and prepared for the State pursuant to the RFP shall belong exclusively to the State and be subject to public inspection in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by the offeror shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the offeror must invoke the protection of Section 2.2-4342F of the Code of Virginia, in writing, either before or at the time the data is submitted. The written notice must specifically identify the data or materials to be protected and state the reasons why protection is necessary.

The proprietary or trade secret materials submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. The classification of an entire proposal document, line-item prices and/or total proposal prices as proprietary or trade secrets is not acceptable and will result in rejection and return of the proposal.

4. Oral Presentation: Offerors who submit a proposal in response to this RFP may be required to give an oral presentation of their proposal to James Madison University. This provides an opportunity for the Offeror to clarify or elaborate on the proposal. This is a fact-finding and explanation session only and does not include negotiation. James Madison University will schedule the time and location of these presentations. Oral presentations are an option of the University and may or may not be conducted. Therefore, proposals should be complete.

B. SPECIFIC PROPOSAL INSTRUCTIONS

Proposals should be as thorough and detailed as possible so that James Madison University may properly evaluate your capabilities to provide the required services. Offerors are required to submit the following items as a complete proposal:

1. Return RFP cover sheet and all addenda acknowledgements, if any, signed and filled out as required.
2. Plan and methodology for providing the goods/services as described in Section IV. Statement of Needs of this Request for Proposal.
3. A written narrative statement to include, but not be limited to, the expertise, qualifications, and experience of the firm and resumes of specific personnel to be assigned to perform the work.
4. Offeror Data Sheet, included as *Attachment A* to this RFP.
5. Small Business Subcontracting Plan, included as *Attachment B* to this RFP. Offeror shall provide a Small Business Subcontracting plan which summarizes the planned utilization of Department of Small Business and Supplier Diversity (SBSD)-certified small businesses which include businesses owned by women and minorities, when they have received Department of Small Business and Supplier Diversity (SBSD) small business certification, under the contract to be awarded as a result of this solicitation. This is a requirement for all prime contracts in excess of \$100,000 unless no subcontracting opportunities exist.
6. Identify the amount of sales your company had during the last twelve months with each VASCUPP Member Institution. A list of VASCUPP Members can be found at: [www.VASCUPP.org](http://www.VASCUPP.org).
7. Proposed Cost. See Section X. Pricing Schedule of this Request for Proposal.

## VI. EVALUATION AND AWARD CRITERIA

### A. EVALUATION CRITERIA

Proposals shall be evaluated by James Madison University using the following criteria:

	Points
1. Quality of products/services offered and suitability for intended purposes	30
2. Qualifications and experience of Offeror in providing the goods/services	20
3. Specific plans or methodology to be used to perform the services	20
4. Participation of Small, Women-Owned, & Minority (SWaM) Businesses	10
5. Cost	20
	100

- B. AWARD TO MULTIPLE OFFERORS: Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals on the basis of the evaluation factors included in the Request for Proposals, including price, if so stated in the Request for Proposals. Negotiations shall be conducted with the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the agency shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. The Commonwealth reserves the right to make multiple awards as a result of this solicitation. The Commonwealth may cancel this Request for Proposals or reject proposals at any time prior to an award, and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous. Should the Commonwealth determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the contractor's proposal as negotiated.

## VII. GENERAL TERMS AND CONDITIONS

- A. PURCHASING MANUAL: This solicitation is subject to the provisions of the Commonwealth of Virginia's Purchasing Manual for Institutions of Higher Education and Their Vendors and any revisions thereto, which are hereby incorporated into this contract in their entirety. A copy of the manual is available for review at the purchasing office. In addition, the manual may be accessed electronically at <http://www.jmu.edu/procurement> or a copy can be obtained by calling Procurement Services at (540) 568-3145.
- B. APPLICABLE LAWS AND COURTS: This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with applicable federal, state and local laws and regulations.
- C. ANTI-DISCRIMINATION: By submitting their proposals, offerors certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as

amended, where applicable, the Virginians with Disabilities Act, the Americans With Disabilities Act and §10 of the Rules Governing Procurement, Chapter 2, Exhibit J, Attachment 1 (available for review at <http://www.jmu.edu/procurement>). If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender, sexual orientation, gender identity, or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*§6 of the Rules Governing Procurement*).

In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the contractor agrees as follows:
    - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
    - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
    - c. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting these requirements.
  2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- D. ETHICS IN PUBLIC CONTRACTING: By submitting their proposals, offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
- E. IMMIGRATION REFORM AND CONTROL ACT OF 1986: By entering into a written contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
- F. DEBARMENT STATUS: By submitting their proposals, offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

- G. ANTITRUST: By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.
- H. MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS RFPs: Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Commonwealth reserves the right to decide, on a case-by-case basis, in its sole discretion, whether to reject such a proposal.
- I. CLARIFICATION OF TERMS: If any prospective offeror has questions about the specifications or other solicitation documents, the prospective offeror should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.
- J. PAYMENT:
1. To Prime Contractor:
    - a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
    - b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
    - c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
    - d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
    - e. Unreasonable Charges. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action

unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Rules Governing Procurement, Chapter 2, Exhibit J, Attachment 1 § 53; available for review at <http://www.jmu.edu/procurement>*).

2. To Subcontractors:
    - a. A contractor awarded a contract under this solicitation is hereby obligated:
      - (1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
      - (2) To notify the agency and the subcontractors, in writing, of the contractor's intention to withhold payment and the reason.
    - b. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.
  3. Each prime contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.
  4. The Commonwealth of Virginia encourages contractors and subcontractors to accept electronic and credit card payments.
- K. PRECEDENCE OF TERMS: Paragraphs A through J of these General Terms and Conditions and the Commonwealth of Virginia Purchasing Manual for Institutions of Higher Education and their Vendors, shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.
- L. QUALIFICATIONS OF OFFERORS: The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the services/furnish the goods and the offeror shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The Commonwealth further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the Commonwealth that such offeror is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.

- M. TESTING AND INSPECTION: The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
- N. ASSIGNMENT OF CONTRACT: A contract shall not be assignable by the contractor in whole or in part without the written consent of the Commonwealth.
- O. CHANGES TO THE CONTRACT: Changes can be made to the contract in any of the following ways:
1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
  2. The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt. The contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said compensation shall be determined by one of the following methods:
    - a. By mutual agreement between the parties in writing; or
    - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the contractor's records and/or to determine the correct number of units independently; or
    - c. By ordering the contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia Purchasing Manual for Institutions of Higher Education and their Vendors. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.
- P. DEFAULT: In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.

- Q. **INSURANCE:** By signing and submitting a proposal under this solicitation, the offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with § 25 of the Rules Governing Procurement – Chapter 2, Exhibit J, Attachment 1, and 65.2-800 et. Seq. of the Code of Virginia (available for review at <http://www.jmu.edu/procurement>) The offeror further certifies that the contractor and any subcontractors will maintain these insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

**MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:**

1. **Workers' Compensation:** Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirement under the Code of Virginia during the course of the contract shall be in noncompliance with the contract.
  2. **Employer's Liability:** \$100,000
  3. **Commercial General Liability:** \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.
  4. **Automobile Liability:** \$1,000,000 combined single limit. *(Required only if a motor vehicle not owned by the Commonwealth is to be used in the contract. Contractor must assure that the required coverage is maintained by the Contractor (or third-party owner of such motor vehicle.)*
- R. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract over \$100,000, as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA web site ([www.eva.virginia.gov](http://www.eva.virginia.gov)) for a minimum of 10 days.
- S. **DRUG-FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

- T. NONDISCRIMINATION OF CONTRACTORS: An offeror, or contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.
- U. eVA BUSINESS TO GOVERNMENT VENDOR REGISTRATION, CONTRACTS, AND ORDERS: The eVA Internet electronic procurement solution, website portal [www.eVA.virginia.gov](http://www.eVA.virginia.gov), streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet eprocurement solution by completing the free eVA Vendor Registration. All offerors must register in eVA and pay the Vendor Transaction Fees specified below; failure to register will result in the proposal being rejected. Vendor transaction fees are determined by the date the original purchase order is issued and the current fees are as follows:
- Vendor transaction fees are determined by the date the original purchase order is issued and the current fees are as follows:
1. For orders issued July 1, 2014 and after, the Vendor Transaction Fee is:
    - a. Department of Small Business and Supplier Diversity (SBSD) certified Small Businesses: 1% capped at \$500 per order.
    - b. Businesses that are not Department of Small Business and Supplier Diversity (SBSD) certified Small Businesses: 1% capped at \$1,500 per order.
  2. For orders issued prior to July 1, 2014 the vendor transaction fees can be found at [www.eVA.virginia.gov](http://www.eVA.virginia.gov).
  3. The specified vendor transaction fee will be invoiced by the Commonwealth of Virginia Department of General Services approximately 60 days after the corresponding purchase order is issued and payable 30 days after the invoice date. Any adjustments (increases/decreases) will be handled through purchase order changes.
- V. AVAILABILITY OF FUNDS: It is understood and agreed between the parties herein that the Commonwealth of Virginia shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.
- W. PRICING CURRENCY: Unless stated otherwise in the solicitation, offerors shall state offered prices in U.S. dollars.
- X. E-VERIFY REQUIREMENT OF ANY CONTRACTOR: Any employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with James Madison University to perform work or provide services pursuant to such

contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to any awarded contract.

- Y. CIVILITY IN STATE WORKPLACES: The contractor shall take all reasonable steps to ensure that no individual, while performing work on behalf of the contractor or any subcontractor in connection with this agreement (each, a “Contract Worker”), shall engage in 1) harassment (including sexual harassment), bullying, cyber-bullying, or threatening or violent conduct, or 2) discriminatory behavior on the basis of race, sex, color, national origin, religious belief, sexual orientation, gender identity or expression, age, political affiliation, veteran status, or disability.

The contractor shall provide each Contract Worker with a copy of this Section and will require Contract Workers to participate in training on civility in the State workplace. Upon request, the contractor shall provide documentation that each Contract Worker has received such training.

For purposes of this Section, “State workplace” includes any location, permanent or temporary, where a Commonwealth employee performs any work-related duty or is representing his or her agency, as well as surrounding perimeters, parking lots, outside meeting locations, and means of travel to and from these locations. Communications are deemed to occur in a state workplace if the Contract Worker reasonably should know that the phone number, email, or other method of communication is associated with a state workplace or is associated with a person who is a state employee.

The Commonwealth of Virginia may require, at its sole discretion, the removal and replacement of any Contract Worker who the Commonwealth reasonably believes to have violated this Section.

This Section creates obligations solely on the part of the contractor. Employees or other third parties may benefit incidentally from this Section and from training materials or other communications distributed on this topic, but the Parties to this agreement intend this Section to be enforceable solely by the Commonwealth and not by employees or other third parties.

## **VIII. SPECIAL TERMS AND CONDITIONS**

- A. ADDITIONAL GOODS AND SERVICES: The University may acquire other goods or services that the supplier provides than those specifically solicited. The University reserves the right, subject to mutual agreement, for the Contractor to provide additional goods and/or services under the same pricing, terms, and conditions and to make modifications or enhancements to the existing goods and services. Such additional goods and services may include other products, components, accessories, subsystems, or related services that are newly introduced during the term of this Agreement. Such additional goods and services will be provided to the University at favored nations pricing, terms, and conditions.
- B. AUDIT: The Contractor hereby agrees to retain all books, records, systems, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The Commonwealth of Virginia, its authorized agents, and/or State auditors shall have full access to and the right to examine any of said materials during said period.
- C. AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH: A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or

limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described above that enters into a contract with a public body shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

- D. CANCELLATION OF CONTRACT: James Madison University reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
- E. CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION: The contractor assures that information and data obtained as to personal facts and circumstances related to faculty, staff, students, and affiliates will be collected and held confidential, during and following the term of this agreement, and will not be divulged without the individual's and the agency's written consent and only in accordance with federal law or the Code of Virginia. This shall include FTI, which is a term of art and consists of federal tax returns and return information (and information derived from it) that is in contractor/agency possession or control which is covered by the confidentiality protections of the Internal Revenue Code (IRC) and subject to the IRC 6103(p)(4) safeguarding requirements including IRS oversight. FTI is categorized as sensitive but unclassified information and may contain personally identifiable information (PII). Contractors who utilize, access, or store personally identifiable information as part of the performance of a contract are required to safeguard this information and immediately notify the agency of any breach or suspected breach in the security of such information. Contractors shall allow the agency to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. Contractors and their employees working on this project may be required to sign a confidentiality statement.
- F. CONTINUITY OF SERVICES:
1. The Contractor recognizes that the services under this contract are vital to the Agency and must be continued without interruption and that, upon contract expiration, a successor, either the Agency or another contractor, may continue them. The Contractor agrees:
    - a. To exercise its best efforts and cooperation to affect an orderly and efficient transition to a successor;
    - b. To make all Agency owned facilities, equipment, and data available to any successor at an appropriate time prior to the expiration of the contract to facilitate transition to successor; and
    - c. That the Agency Contracting Officer shall have final authority to resolve disputes related to the transition of the contract from the Contractor to its successor.
  2. The Contractor shall, upon written notice from the Contract Officer, furnish phase-in/phase-out services for up to ninety (90) days after this contract expires and shall negotiate in good faith a plan with the successor to execute the phase-in/phase-out services. This plan shall be subject to the Contract Officer's approval.

- G. The Contractor shall be reimbursed for all reasonable, pre-approved phase-in/phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract. All phase-in/phase-out work fees must be approved by the Contract Officer in writing prior to commencement of said work.
- H. COOPERATIVE PURCHASING / USE OF AGREEMENT BY THIRD PARTIES: It is the intent of this solicitation and resulting contract(s) to allow for cooperative procurement. Accordingly, any public body, (to include government/state agencies, political subdivisions, etc.), cooperative purchasing organizations, public or private health or educational institutions or any University related foundation and affiliated corporations may access any resulting contract if authorized by the Contractor.

Participation in this cooperative procurement is strictly voluntary. If authorized by the Contractor(s), the resultant contract(s) will be extended to the entities indicated above to purchase goods and services in accordance with contract terms. As a separate contractual relationship, the participating entity will place its own orders directly with the Contractor(s) and shall fully and independently administer its use of the contract(s) to include contractual disputes, invoicing and payments without direct administration from the University. No modification of this contract or execution of a separate agreement is required to participate; however, the participating entity and the Contractor may modify the terms and conditions of this contract to accommodate specific governing laws, regulations, policies, and business goals required by the participating entity. Any such modification will apply solely between the participating entity and the Contractor.

The Contractor will notify the University in writing of any such entities accessing this contract. The Contractor will provide semi-annual usage reports for all entities accessing the contract. The University shall not be held liable for any costs or damages incurred by any other participating entity as a result of any authorization by the Contractor to extend the contract. It is understood and agreed that the University is not responsible for the acts or omissions of any entity and will not be considered in default of the contract no matter the circumstances.

Use of this contract(s) does not preclude any participating entity from using other contracts or competitive processes as needed.

- I. CRIMINAL BACKGROUND CHECKS OF PERSONNEL ASSIGNED BY CONTRACTOR TO PERFORM WORK ON JMU PROPERTY: The Contractor shall obtain criminal background checks on all of their contracted employees who will be assigned to perform services on James Madison University property. The results of the background checks will be directed solely to the Contractor. The Contractor bears responsibility for confirming to the University contract administrator that the background checks have been completed prior to work being performed by their employees or subcontractors. The Contractor shall only assign to work on the University campus those individuals whom it deems qualified and permissible based on the results of completed background checks. Notwithstanding any other provision herein, and to ensure the safety of students, faculty, staff and facilities, James Madison University reserves the right to approve or disapprove any contract employee that will work on JMU property. Disapproval by the University will solely apply to JMU property and should have no bearing on the Contractor's employment of an individual outside of James Madison University.

- J. IDENTIFICATION OF PROPOSAL ENVELOPE: The signed proposal should be returned in a separate envelope or package, sealed and identified as follows:

From:		
	Name of Offeror	Due Date April 25, 2024 @ 2:00 PM
	Street or Box No.	RFP # FDC-1198
	City, State, Zip Code	RFP Title Online Training Services Provider
Name of Purchasing Officer: Doug Chester		

The envelope should be addressed as directed on the title page of the solicitation.

The Offeror takes the risk that if the envelope is not marked as described above, it may be inadvertently opened and the information compromised, which may cause the proposal to be disqualified. Proposals may be hand-delivered to the designated location in the office issuing the solicitation. No other correspondence or other proposals should be placed in the envelope.

- K. INDEMNIFICATION: Contractor agrees to indemnify, defend and hold harmless the Commonwealth of Virginia, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the contractor/any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the using agency or to failure of the using agency to use the materials, goods, or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered.
- L. LATE PROPOSALS: To be considered for selection, proposals must be received by the issuing office by the designated date and hour. The official time used in the receipt of proposals is that time on the automatic time stamp machine in the issuing office. Proposals received in the issuing office after the date and hour designated are automatically non responsive and will not be considered. The University is not responsible for delays in the delivery of mail by the U.S. Postal Service, private couriers, or the intra university mail system. It is the sole responsibility of the Offeror to ensure that its proposal reaches the issuing office by the designated date and hour.
- M. LATEST SOFTWARE VERSION: Any software product(s) provided under the contract shall be the latest version available to the general public as of the due date of this solicitation.
- N. NONVISUAL ACCESS TO TECHNOLOGY: All information technology which, pursuant to this Agreement, is purchased or upgraded by or for the use of any State agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply with the following nonvisual access standards from the date of purchase or upgrade until the expiration of this Agreement:
- (i) effective, interactive control and use of the Technology shall be readily achievable by nonvisual means;
  - (ii) the Technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the Technology interacts;

- (iii) nonvisual access technology shall be integrated into any networks used to share communications among employees, program participants or the public; and
- (iv) the technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

Compliance with the foregoing nonvisual access standards shall not be required if the head of the using agency, institution or political subdivision determines that (i) the Technology is not available with nonvisual access because the essential elements of the Technology are visual and (ii) nonvisual equivalence is not available.

Installation of hardware, software or peripheral devices used for nonvisual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of nonvisual access software and peripheral devices.

If requested, the Contractor must provide a detailed explanation of how compliance with the foregoing nonvisual access standards is achieved and a validation of concept demonstration.

The requirements of this Paragraph shall be construed to achieve full compliance with the Information Technology Access Act, 2.2-3500 through 2.2-3504 of the Code of Virginia.

All information technology which, pursuant to this Agreement, is purchased or upgraded by or for the use of any Commonwealth agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply with Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended. If requested, the Contractor must provide a detailed explanation of how compliance with Section 508 of the Rehabilitation Act is achieved and a validation of concept demonstration. (<http://www.section508.gov/>). The requirements of this Paragraph along with the Non-Visual Access to Technology Clause shall be construed to achieve full compliance with the Information Technology Access Act, §§2.2-3500 through 2.2-3504 of the *Code of Virginia*.

- O. OPERATING VEHICLES ON JAMES MADISON UNIVERSITY CAMPUS: Operating vehicles on sidewalks, plazas, and areas heavily used by pedestrians is prohibited. In the unlikely event a driver should find it necessary to drive on James Madison University sidewalks, plazas, and areas heavily used by pedestrians, the driver must yield to pedestrians. For a complete list of parking regulations, please go to [www.jmu.edu/parking](http://www.jmu.edu/parking); or to acquire a service representative parking permit, contact Parking Services at 540.568.3300. The safety of our students, faculty and staff is of paramount importance to us. Accordingly, violators may be charged.
- P. PRIME CONTRACTOR RESPONSIBILITIES: The contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime contractor. The contractor agrees that he is as fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.
- Q. PUBLIC POSTING OF COOPERATIVE CONTRACTS: James Madison University maintains a web-based contracts database with a public gateway access. Any resulting

cooperative contract/s to this solicitation will be posted to the publicly accessible website. Contents identified as proprietary information will not be made public.

- R. RENEWAL OF CONTRACT: This contract may be renewed by the Commonwealth for a period of four (4) successive one-year periods under the terms and conditions of the original contract except as stated in 1. and 2. below. Price increases may be negotiated only at the time of renewal. Written notice of the Commonwealth's intention to renew shall be given approximately 90 days prior to the expiration date of each contract period.

1. If the Commonwealth elects to exercise the option to renew the contract for an additional one-year period, the contract price(s) for the additional one year shall not exceed the contract price(s) of the original contract increased/decreased by no more than the percentage increase/decrease of the other services category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.
2. If during any subsequent renewal periods, the Commonwealth elects to exercise the option to renew the contract, the contract price(s) for the subsequent renewal period shall not exceed the contract price(s) of the previous renewal period increased/decreased by more than the percentage increase/decrease of the other services category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.

- S. RENEWAL OF MAINTENANCE: Maintenance of the hardware or software specified in the resultant contract may be renewed by the mutual written agreement of both parties for additional one-year periods, under the terms and conditions of the original contract except as noted herein. Price changes may be negotiated at time of renewal; however, in no case shall the maintenance costs for a succeeding one-year period exceed the prior year's contract price(s), increased or decreased by more than the percentage increase or decrease in the other services category of the CPI-W section of the US Bureau of Labor Statistics Consumer Price Index, for the latest twelve months for which statistics are available.

- T. SMALL BUSINESS SUBCONTRACTING AND EVIDENCE OF COMPLIANCE:

1. It is the goal of the Commonwealth that 42% of its purchases are made from small businesses. This includes discretionary spending in prime contracts and subcontracts. All potential offerors are required to submit a Small Business Subcontracting Plan. Unless the offeror is registered as a Department of Small Business and Supplier Diversity (SBSD)-certified small business and where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such subcontracting opportunities to SBSD-certified small businesses. This shall not exclude SBSD-certified women-owned and minority-owned businesses when they have received SBSD small business certification. No offeror or subcontractor shall be considered a Small Business, a Women-Owned Business or a Minority-Owned Business unless certified as such by the Department of Small Business and Supplier Diversity (SBSD) by the due date for receipt of proposals. If small business subcontractors are used, the prime contractor agrees to report the use of small business subcontractors by providing the purchasing office at a minimum the following information: name of small business with the SBSD certification number or FEIN, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product/service provided. **This information shall be submitted to: JMU Office of Procurement Services, Attn: SWAM Subcontracting Compliance, MSC 5720, Harrisonburg, VA 22807.**

2. Each prime contractor who wins an award in which provision of a small business subcontracting plan is a condition of the award, shall deliver to the contracting agency or institution with every request for payment, evidence of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the small business subcontracting plan. **This information shall be submitted to: JMU Office of Procurement Services, SWAM Subcontracting Compliance, MSC 5720, Harrisonburg, VA 22807.** When such business has been subcontracted to these firms and upon completion of the contract, the contractor agrees to furnish the purchasing office at a minimum the following information: name of firm with the Department of Small Business and Supplier Diversity (SBSD) certification number or FEIN number, phone number, total dollar amount subcontracted, category type (small, women-owned, or minority-owned), and type of product or service provided. Payment(s) may be withheld until compliance with the plan is received and confirmed by the agency or institution. The agency or institution reserves the right to pursue other appropriate remedies to include, but not be limited to, termination for default.
  3. Each prime contractor who wins an award valued over \$200,000 shall deliver to the contracting agency or institution with every request for payment, information on use of subcontractors that are not Department of Small Business and Supplier Diversity (SBSD)-certified small businesses. When such business has been subcontracted to these firms and upon completion of the contract, the contractor agrees to furnish the purchasing office at a minimum the following information: name of firm, phone number, FEIN number, total dollar amount subcontracted, and type of product or service provided. **This information shall be submitted to: JMU Office of Procurement Services, Attn: SWAM Subcontracting Compliance, MSC 5720, Harrisonburg, VA 22807.**
- U. **SOFTWARE UPGRADES:** The Commonwealth shall be entitled to any and all upgraded versions of the software covered in the contract that becomes available from the contractor, included as part of the annual fee.
- V. **SUBMISSION OF INVOICES:** All invoices shall be submitted within sixty days of contract term expiration for the initial contract period as well as for each subsequent contract renewal period. Any invoices submitted after the sixty-day period will not be processed for payment.
- W. **THIRD PARTY ACQUISITION OF SOFTWARE:** The contractor shall notify the procuring agency in writing should the intellectual property, associated business, or all of its assets be acquired by a third party. The contractor further agrees that the contract's terms and conditions, including any and all license rights and related services, shall not be affected by the acquisition. Prior to completion of the acquisition, the contractor shall obtain, for the Commonwealth's benefit and deliver thereto, the assignee's agreement to fully honor the terms of the contract.
- X. **TITLE TO SOFTWARE:** By submitting a bid or proposal, the bidder or offeror represents and warrants that it is the sole owner of the software or, if not the owner, that it has received all legally required authorizations from the owner to license the software, has the full power to grant the rights required by this solicitation, and that neither the software nor its use in accordance with the contract will violate or infringe upon any patent, copyright, trade secret, or any other property rights of another person or organization.
- Y. **UNDERSTANDING OF REQUIREMENTS:** It is the responsibility of each offeror to inquire about and clarify any requirements of this solicitation that is not understood. The University will not be bound by oral explanations as to the meaning of specifications or language contained in this solicitation. Therefore, all inquiries deemed to be substantive in nature must be in writing and submitted to the responsible buyer in the Procurement Services Office. Offerors

must ensure that written inquiries reach the buyer at least five (5) days prior to the time set for receipt of offerors proposals. A copy of all queries and the respective response will be provided in the form of an addendum to all offerors who have indicated an interest in responding to this solicitation. Your signature on your Offer certifies that you fully understand all facets of this solicitation. These questions may be sent by Fax to 540/568-7935.

- Z. WARRANTY AGAINST SHUTDOWN DEVICES: The contractor warrants that the equipment and software provided under the contract shall not contain any lock, counter, CPU reference, virus, worm, or other device capable of halting operations or erasing or altering data or programs. Contractor further warrants that neither it, nor its agents, employees, or subcontractors shall insert any shutdown device following delivery of the equipment and software.

## **IX. METHOD OF PAYMENT**

The contractor will be paid based on invoices submitted in accordance with the solicitation and any negotiations. James Madison University recognizes the importance of expediting the payment process for our vendors and suppliers; we request that our vendors and suppliers enroll in our bank's Comprehensive Payable options: either the Virtual Payables Virtual Card or the PayMode-X electronic deposit (ACH) to your bank account so that future payments are made electronically. Contractors signed up for the Virtual Payables process will receive the benefit of being paid Net 15. Additional information is available online at:

<http://www.jmu.edu/financeoffice/accounting-operations-disbursements/cash-investments/vendor-payment-methods.shtml>

## **X. PRICING SCHEDULE**

The offeror shall provide pricing for all products and services included in proposal indicating one-time and on-going costs. Breakdown of cost detail is strongly encouraged, and may include such clarifications as optional modules of software, services package types and rates, hourly service charges (rates should indicate if they are remote, offshore, or on-prem rates), implementation fees, hosting fees, subscription costs by pricing model, and any discounts available to the university.

Cooperative Contract Note: The resulting contract will be a cooperative contract, and so the Contractor awarded may utilize the contract with other agencies under the *Special T&C Cooperative Purchasing / Use of Agreement by Third Parties*. In order to create a contract that includes pricing information that is inclusive of other use case sizing for VASCUPP colleges and universities, or other agencies, the costs proposed being as inclusive as possible of all offered products and tiers is suggested. Pricing may include relevant metrics used to establish costs such as: unlimited uses, headcount/seat based or tier-based costs, full-time equivalency of student-based tiers, etc. Pricing may also indicate if there are tier thresholds that may provide additional discount off list or lower per unit costs for agencies that anticipate future growth and may wish to buy forward.

Credit Card Fees: Specify any associated charge card processing fees, if applicable, to be billed to the university and when they are incurred.

Provide pricing for items requested in I.V. Statement of Needs, including but not limited to potential costs listed below:

- A. **Licensing Model and Pricing.** Provide price for product and services including a total project cost.

- a. Provide breakdown of base pricing and separate optional module costs. Per item or tiered pricing tables as applicable.
  - b. Provide breakdown of hardware costs (indicate required and optional devices as relevant).
  - c. Ongoing Maintenance and Support.
  - d. Hosting.
- B. Services. Specify remote vs. on-prem rates (on-prem rates to be inclusive of travel costs).
- a. Implementation Services, include expenses breakdown, (personnel/days/hours).
  - b. Data migration costs.
  - c. Customization and Configuration Cost.
  - d. Integrations.
  - e. Single Sign On.
  - f. Initial and Ongoing Training. Specify remote, in person (on premises hourly rates to be inclusive of travel costs), course based, or other available packages or hourly fees.

All Other Cost (including optional products).

## **XI. ATTACHMENTS**

Attachment A: Offeror Data Sheet

Attachment B: Small, Women, and Minority-owned Business (SWaM) Utilization Plan

Attachment C: Standard Contract Sample

Attachment D: JMU IT Services Addendum (*All Offerors are required to complete*)

Attachment E: Commonwealth of Virginia Agency Contract Form Addendum to Contractor's Form (*All Offerors are required to complete*)

Attachment F: Sample PAC Agreement

Attachment G: Higher Education Cloud Assessment Tool (HECVAT) - attached as a separate Excel spreadsheet (*All Offerors are required to complete*)

## ATTACHMENT A

### OFFEROR DATA SHEET

#### TO BE COMPLETED BY OFFEROR

1. **QUALIFICATIONS OF OFFEROR:** Offerors must have the capability and capacity in all respects to fully satisfy the contractual requirements.
2. **YEARS IN BUSINESS:** Indicate the length of time you have been in business providing these types of goods and services.

Years \_\_\_\_\_ Months \_\_\_\_\_

3. **REFERENCES:** Indicate below a listing of at least five (5) organizations, either commercial or governmental/educational, that your agency is servicing. Include the name and address of the person the purchasing agency has your permission to contact.

CLIENT	LENGTH OF SERVICE	ADDRESS	CONTACT PERSON/PHONE #
--------	-------------------	---------	---------------------------


4. List full names and addresses of Offeror and any branch offices which may be responsible for administering the contract.


5. **RELATIONSHIP WITH THE COMMONWEALTH OF VIRGINIA:** Is any member of the firm an employee of the Commonwealth of Virginia who has a personal interest in this contract pursuant to the [CODE OF VIRGINIA](#), SECTION 2.2-3100 – 3131?

[ ] YES [ ] NO

IF YES, EXPLAIN: \_\_\_\_\_


## ATTACHMENT B

### Small, Women and Minority-owned Businesses (SWaM) Utilization Plan

**Offeror Name:** \_\_\_\_\_ **Preparer Name:** \_\_\_\_\_

**Date:** \_\_\_\_\_

Is your firm a **Small Business Enterprise** certified by the Department of Small Business and Supplier Diversity (SBSD)? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, certification number: \_\_\_\_\_ Certification date: \_\_\_\_\_

Is your firm a **Woman-owned Business Enterprise** certified by the Department of Small Business and Supplier Diversity (SBSD)? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, certification number: \_\_\_\_\_ Certification date: \_\_\_\_\_

Is your firm a **Minority-Owned Business Enterprise** certified by the Department of Small Business and Supplier Diversity (SBSD)? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, certification number: \_\_\_\_\_ Certification date: \_\_\_\_\_

Is your firm a **Micro Business** certified by the Department of Small Business and Supplier Diversity (SBSD)? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, certification number: \_\_\_\_\_ Certification date: \_\_\_\_\_

**Instructions:** *Populate the table below to show your firm's plans for utilization of small, women-owned and minority-owned business enterprises in the performance of the contract. Describe plans to utilize SWAMs businesses as part of joint ventures, partnerships, subcontractors, suppliers, etc.*

**Small Business:** "Small business " means a business, independently owned or operated by one or more persons who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, which, together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years.

**Woman-Owned Business Enterprise:** A business concern which is at least 51 percent owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership or limited liability company or other entity, at least 51 percent of the equity ownership interest in which is owned by one or more women, and whose management and daily business operations are controlled by one or more of such individuals. **For purposes of the SWAM Program, all certified women-owned businesses are also a small business enterprise.**

**Minority-Owned Business Enterprise:** A business concern which is at least 51 percent owned by one or more minorities or in the case of a corporation, partnership or limited liability company or other entity, at least 51 percent of the equity ownership interest in which is owned by one or more minorities and whose management and daily business operations are controlled by one or more of such individuals. **For purposes of the SWAM Program, all certified minority-owned businesses are also a small business enterprise.**

**Micro Business** is a certified Small Business under the SWaM Program and has no more than twenty-five (25) employees **AND** no more than \$3 million in average annual revenue over the three-year period prior to their certification.

**All small, women, and minority owned businesses must be certified by the Commonwealth of Virginia Department of Small Business and Supplier Diversity (SBSD) to be counted in the SWAM program. Certification applications are available through SBSD at 800-223-0671 in Virginia, 804-786-6585 outside Virginia, or online at <http://www.sbsd.virginia.gov/> (Customer Service).**

***RETURN OF THIS PAGE IS REQUIRED***

## ATTACHMENT B (CNT'D)

## Small, Women and Minority-owned Businesses (SWaM) Utilization Plan

Procurement Name and Number: Online Training Services Provider FDC-1198 Date Form Completed:                     

**Listing of Sub-Contractors, to include, Small, Woman Owned and Minority Owned Businesses  
for this Proposal and Subsequent Contract**

Offeror / Proposer:

---

Firm

---

Address

---

Contact Person/No.

[illegible]

*(Form shall be submitted with proposal and if awarded, again with submission of each request for payment)*

***RETURN OF THIS PAGE IS REQUIRED***

ATTACHMENT C



**COMMONWEALTH OF VIRGINIA  
STANDARD CONTRACT**

Contract No. \_\_\_\_\_

This contract entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ hereinafter called the "Contractor" and Commonwealth of Virginia, James Madison University called the "Purchasing Agency".

WITNESSETH that the Contractor and the Purchasing Agency, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

**SCOPE OF CONTRACT:** The Contractor shall provide the services to the Purchasing Agency as set forth in the Contract Documents.

**PERIOD OF PERFORMANCE:** From \_\_\_\_\_ through \_\_\_\_\_

The contract documents shall consist of:

- (1) This signed form;
- (2) The following portions of the Request for Proposals dated \_\_\_\_\_:
  - (a) The Statement of Needs,
  - (b) The General Terms and Conditions,
  - (c) The Special Terms and Conditions together with any negotiated modifications of those Special Conditions;
  - (d) List each addendum that may be issued
- (3) The Contractor's Proposal dated \_\_\_\_\_ and the following negotiated modification to the Proposal, all of which documents are incorporated herein.
  - (a) Negotiations summary dated \_\_\_\_\_.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

**CONTRACTOR:**

**PURCHASING AGENCY:**

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Name)

Title: \_\_\_\_\_

Title: \_\_\_\_\_

## ATTACHMENT D

### James Madison University Information Technology Services Addendum

CONTRACTOR NAME: \_\_\_\_\_

PRODUCT/SOLUTION: \_\_\_\_\_

#### Definitions:

- **Agreement:** The “Agreement” includes the contract, this addendum and any additional addenda and attachments to the contract, including the Contractor’s Form.
- **University:** “University” or “the University” means James Madison University, its trustees, officers and employees.
- **University Data:** “University Data” is defined as any data that the Contractor creates, obtains, accesses, transmits, maintains, uses, processes, stores or disposes of in performance of the Agreement. It includes all Personally Identifiable Information and other information that is not intentionally made generally available by the University on public websites.
- **Personally Identifiable Information:** “Personally Identifiable Information” (PII) includes but is not limited to: Any information that directly relates to an individual and is reasonably likely to enable identification of that individual or information that is defined as PII and subject to protection by James Madison University under federal or Commonwealth of Virginia law.
- **Security Breach:** “Security Breach” means a security-relevant event in which the security of a system or procedure involving University Data is breached, and in which University Data is exposed to unauthorized disclosure, access, alteration, or use.
- **Service(s):** “Service” or “Services” means any goods or services acquired by the University from the Contractor.

1. **Rights and License in and to University Data:** The parties agree that as between them, all rights including all intellectual property rights in and to University Data shall remain the exclusive property of the University, and Contractor has a limited, nonexclusive license to use the data as provided in the Agreement solely for the purpose of performing its obligations hereunder. The Agreement does not give a party any rights, implied or otherwise, to the other’s data, content, or intellectual property.
2. **Disclosure:** All goods, products, materials, documents, reports, writings, video images, photographs, or papers of any nature including software or computer images prepared or provided to the Contractor (or its subcontractors) for the University will not be disclosed to any other person or entity without the written permission of the University.
3. **Data Privacy:**
  - a. Contractor will use University Data only for the purpose of fulfilling its duties under the Agreement and will not share such data with or disclose it to any third party without the prior written consent of the University, except as required by law.
  - b. University Data will not be stored outside the United States without prior written consent from the University.
  - c. Contractor will provide access to University Data only to its employees and subcontractors who need to access the data to fulfill obligations under the Agreement. The Contractor will ensure that the Contractor’s employees, and subcontractors when applicable, who perform work under the Agreement have received appropriate instruction as to how to comply with the data protection provisions of the Agreement and have agreed to confidentiality obligations at least as restrictive as those contained in this Addendum.
    - i. If the Contractor will have access to the records protected by the Family Educational Rights and Privacy Act (FERPA), Contractor acknowledges that for the purposes of the Agreement it will be designated as a “school official” with “legitimate educational interests” in such records, as those terms have been defined under FERPA and its implementing regulations, and Contractor agrees

to abide by the limitations and requirements imposed on school officials. Contractor will use such records only for the purpose of fulfilling its duties under the Agreement for University's and its End Users' benefit, and will not share such data with or disclose it to any third party except as required by law or authorized in writing by the University. Contractor acknowledges that its access to such records is limited to only those directly related to and necessary for the completion of Contractor's duties under the Agreement.

- d. The Contractor shall be responsible and liable for the acts and omissions of its subcontractors, including but not limited to third-party cloud hosting providers, and shall assure compliance with the requirements of the Agreement.

**4. Data Security:**

- a. Contractor will store and process University Data in accordance with commercial best practices, including appropriate administrative, physical, and technical safeguards, to secure such data from unauthorized access, disclosure, alteration, and use. Such measures will be no less protective than those used to secure Contractor's own data of a similar type, and in no event less than reasonable in view of the type and nature of the data involved.
- b. Contractor will store and process University Data in a secure site and will provide a SOC 2 or other security report deemed sufficient by the University from a third-party reviewer along with annual updated security reports. If the Contractor is using a third-party cloud hosting company such as AWS, Rackspace, etc., the Contractor will obtain the security audit report from its hosting company and give the results to the University. The University should not have to request the report directly from the hosting company.
- c. Contractor will use industry-standards and up-to-date security tools, technologies and practices such as network firewalls, anti-virus, vulnerability scans, system logging, intrusion detection, 24x7 system monitoring, and third-party penetration testing in providing services under the Agreement.
- d. Without limiting the foregoing, Contractor warrants that all electronic University Data will be encrypted in transmission (including via web interface) and stored at AES 256 or stronger.

**5. Data Authenticity, Integrity and Availability:**

- a. Contractor will take reasonable measures, including audit trails, to protect University Data against deterioration or degradation of data quality and authenticity. Contractor shall be responsible for ensuring that University Data, per the Virginia Public Records Act, is "preserved, maintained, and accessible throughout their lifecycle, including converting and migrating electronic records as often as necessary so that information is not lost due to hardware, software, or media obsolescence or deterioration."
- b. Contractor will ensure backups are successfully completed at the agreed interval and that restoration capability is maintained for restoration to a point-in-time and/or to the most current backup available.
- c. Contractor will maintain an uptime of 99.99% or greater as agreed to for the contracted services via the use of appropriate redundancy, continuity of operations and disaster recovery planning and implementations, excluding regularly scheduled maintenance time.

**6. Employee Background Checks and Qualifications:**

- a. Contractor shall ensure that its employees have undergone appropriate background screening and possess all needed qualifications to comply with the terms of the Agreement including but not limited to all terms relating to data and intellectual property protection.
- b. If the Contractor must under this agreement create, obtain, transmit, use, maintain, process, or dispose of the subset of University Data known as Personally Identifiable Information or financial or business data, the Contractor shall perform the following background checks on all employees who have potential to access such data in accordance with the Fair Credit Reporting Act: Social Security Number trace; seven (7) year felony and misdemeanor criminal records check of federal, state, or local records (as applicable) for job related crimes; Office of Foreign Assets Control List (OFAC) check; Bureau of Industry and Security List (BIS) check; and Office of Defense Trade Controls Debarred Persons List (DDTC).

**7. Security Breach:**

- a. Response: Immediately (within one day) upon becoming aware of a Security Breach, or of circumstances that could have resulted in unauthorized access to or disclosure or use of University Data, Contractor will notify the University ISO at ([ISO@jmu.edu](mailto:ISO@jmu.edu)), fully investigate the incident, and cooperate fully with the University's investigation of and response to the incident. Except as otherwise required by law, Contractor will not provide notice of the incident directly to individuals whose Personally Identifiable Information was involved, regulatory agencies, or other entities, without prior written permission from the University.
- b. Liability:
  - i. If Contractor must under this agreement create, obtain, transmit, use, maintain, process, or dispose of the subset of University Data known as Personally Identifiable Information, the following provisions apply. In addition to any other remedies available to the University under law or equity, Contractor will reimburse the University in full for all costs incurred by the University in investigation and remediation of any Security Breach caused by Contractor, including but not limited to providing notification to individuals whose Personally Identifiable Information was compromised and to regulatory agencies or other entities as required by law or contract; providing one year's credit monitoring to the affected individuals if the Personally Identifiable Information exposed during the breach could be used to commit financial identity theft; and the payment of legal fees, audit costs, fines, and other fees imposed by regulatory agencies or contracting partners as a result of the Security Breach.
  - ii. If Contractor will NOT under this agreement create, obtain, transmit, use, maintain, process, or dispose of the subset of University Data known as Personally Identifiable Information, the following provisions apply. In addition to any other remedies available to the University under law or equity, Contractor will reimburse the University in full for all costs reasonably incurred by the University in investigation and remediation of any Security Breach caused by Contractor.

**8. Requests for Data, Response to Legal Orders or Demands for Data:**

- a. Except as otherwise expressly prohibited by law, Contractor will:
  - i. immediately notify the University of any subpoenas, warrants, or other legal orders, demands or requests received by Contractor seeking University Data;
  - ii. consult with the University regarding its response;
  - iii. cooperate with the University's requests in connection with efforts by the University to intervene and quash or modify the legal order, demand or request; and
  - iv. Upon the University's request, provide the University with a copy of its response.
- b. Contractor will make itself and any employees, contractors, or agents assisting in the performance of its obligations under the Agreement, available to the University at no cost to the University based upon claimed violation of any laws relating to security and/or privacy of the data that arises out of the Agreement. This shall include any data preservation or eDiscovery required by the University.
- c. The University may request and obtain access to University Data and related logs at any time for any reason and at no extra cost.

**9. Data Transfer Upon Termination or Expiration:**

- a. Contractor's obligations to protect University Data shall survive termination of the Agreement until all University Data has been returned or securely destroyed, meaning taking actions that render data written on media unrecoverable by both ordinary and extraordinary means.
- b. Upon termination or expiration of the Agreement, Contractor will ensure that all University Data are securely transferred, returned or destroyed as directed by the University in its sole discretion within 60 days of termination of the Agreement. Transfer/migration to the University or a third party designated by the University shall occur without significant interruption in service. Contractor shall ensure that such transfer/migration uses facilities, methods, and data formats that are accessible and compatible with the relevant systems of the University or its transferee, and to the extent technologically feasible, that the University will have reasonable access to University Data during the transition.
- c. In the event that the University requests destruction of its data, Contractor agrees to securely destroy all data in its possession and in the possession of any subcontractors or agents to which

Contractor might have transferred University data. Contractor agrees to provide documentation of data destruction to the University.

- d. Contractor will notify the University of impending cessation of its business and any contingency plans. This includes immediate transfer of any previously escrowed assets and data and providing the University access to Contractor's facilities to remove and destroy University-owned assets and data. Contractor shall implement its exit plan and take all necessary actions to ensure a smooth transition of service with minimal disruption to the University. The Contractor will also provide, as applicable, a full inventory and configuration of servers, routers, other hardware, and software involved in service delivery along with supporting documentation, indicating which if any of these are owned by or dedicated to the University. Contractor will work closely with its successor to ensure a successful transition to the new service, with minimal downtime and effect on the University, all such work to be coordinated and performed in advance of the formal, final transition date.

10. **Audits:**

- a. The University reserves the right in its sole discretion to perform audits of the Contractor to ensure compliance with the terms of the Agreement. Contractor shall reasonably cooperate in the performance of such audits. This provision applies to all agreements under which Contractor must create, obtain, transmit, use, maintain, process, or dispose of University Data.
- b. If Contractor must under the Agreement create, obtain, transmit, use, maintain, process, or dispose of the subset of University Data known as Personally Identifiable Information or financial or business data, Contractor will at its expense conduct or have conducted at least annually a(n):
  - i. American Institute of CPAs Service Organization Controls 2 (SOC 2) audit, or other independent security audit with audit objectives deemed sufficient by the University, which attests to Contractor's security policies, procedures, and controls. Contractor shall also submit such documentation for any third-party cloud hosting provider(s) they may use (e.g. AWS, Rackspace, Azure, etc.) and for all subservice providers or business partners relevant to the Agreement. Contractor shall also provide James Madison University with a designated point of contact for the SOC reports and risks related to the contract. This person shall address issues raised in the SOC reports of the Contractor and its relevant providers and partners, and respond to any follow up questions posed by the University in relation to technology systems, infrastructure, or information security concerns related to the contract.
  - ii. vulnerability scan of Contractor's electronic systems and facilities that are used in any way to deliver electronic services under the Agreement; and
  - iii. formal penetration test performed by qualified personnel of Contractor's electronic systems and facilities that are used in any way to deliver electronic services under the Agreement.
- c. Additionally, Contractor will provide the University upon request the results of the above audits, scans and tests, and will promptly modify its security measures as needed based on those results in order to meet its obligations under the Agreement. The University may require, at university expense, the Contractor to perform additional audits and tests, the results of which will be provided promptly to the University.

11. **Compliance:**

- a. Contractor will comply with all applicable laws and industry standards in performing services under the Agreement. Any Contractor personnel visiting the University's facilities will comply with all applicable University policies regarding access to, use of, and conduct within such facilities. The University will provide copies of such policies to Contractor upon request.
- b. To the extent applicable to the design and intended use of the service, Contractor warrants that the service it will provide to the University is fully compliant with and will enable the University to be compliant with relevant requirements of all laws, regulation, and guidance applicable to the University and/or Contractor, including but not limited to: the Family Educational Rights and Privacy Act (FERPA), Health Insurance Portability and Accountability Act (HIPAA), Health Information Technology for Economic and Clinical Health Act (HITECH), Gramm-Leach-Bliley Financial Modernization Act (GLB), Payment Card Industry Data Security Standards (PCI-DSS), Americans with

Disabilities Act (ADA), Federal Export Administration Regulations, and Defense Federal Acquisitions Regulations.

12. **No End User Agreements:** Any agreements or understandings, whether electronic, click through, verbal or in writing, between Contractor and University employees or other end users under the Agreement that conflict with the terms of the Agreement, including but not limited to this Addendum, shall not be valid or binding on the University or any such end users.

IN WITNESS WHEREOF, the parties have caused this addendum to be duly executed, intending thereby to be legally bound. In the event of conflict or inconsistency between terms of the Agreement and this Addendum, the terms of this Addendum shall prevail.

<u>JAMES MADISON UNIVERSITY</u>	<u>CONTRACTOR</u>
SIGNATURE: _____	SIGNATURE: _____
PRINTED NAME: _____	PRINTED NAME: _____
TITLE: _____	TITLE: _____
DATE: _____	DATE: _____

*REV: March 23, 2020*

## ATTACHMENT E

### Commonwealth of Virginia Agency Contract From Addendum to Contractor's Form

**AGENCY NAME:** James Madison University

**CONTRACTOR NAME:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

The Commonwealth and the Contractor are this day entering into a contract and, for their mutual convenience, the parties are using the standard form agreement provided by the Contractor. This addendum, duly executed by the parties, is attached to and hereby made a part of the contract. In the event that the Vendor enters into terms of use agreements or other agreements of understanding with university employees and students (whether electronic, click-through, verbal, or in writing), the terms and conditions of this Agreement shall prevail.

The Contractor represents and warrants that it is a(n) // individual proprietorship // association // partnership // corporation // governmental agency or authority authorized to do in Virginia the business provided for in this contract. **(Check the appropriate box.)**

Notwithstanding anything in the Contractor's form to which this Addendum is attached, the payments to be made by the Commonwealth for all goods, services and other deliverables under this contract shall not exceed Purchase Order Amounts; payments will be made only upon receipt of a proper invoice, detailing the goods/services provided and submitted to James Madison University. The total cumulative liability of the Commonwealth, its officers, employees and agents in connection with this contract or in connection with any goods, services, actions or omissions relating to the contract, shall not under any circumstance exceed payment of the above maximum purchase price plus liability for an additional amount equal to such maximum purchase price. In its performance under this contract, the Contractor acts and will act as an independent contractor, and not as an agent or employee of the Commonwealth.

The Contractor's form contract is, with the exceptions noted herein, acceptable to the Commonwealth. Nonetheless, because certain standard clauses that may appear in the Contractor's form agreement cannot be accepted by the Commonwealth, and in consideration of the convenience of using that form, and this form, without the necessity of specifically negotiating a separate contract document, the parties hereto specifically agree that, notwithstanding any provisions appearing in the attached Contractor's form contract, none of the following paragraphs **1 through 18** shall have any effect or be enforceable against the Commonwealth:

1. Requiring the Commonwealth to maintain any type of insurance either for the Commonwealth's benefit or for the contractor's benefit;
2. Renewing or extending the agreement beyond the initial term or automatically continuing the contract period from term to term;
3. Requiring or stating that the terms of the attached Contractor's form agreement shall prevail over the terms of this addendum in the event of conflict;
4. Requiring the Commonwealth to indemnify or to hold harmless the Contractor for any act or omission;
5. Imposing interest charges contrary to that specified by the Code of Virginia, §2.2-4347 through 2.2-4354, Prompt Payment;
6. Requiring the application of the law of any state other than Virginia in interpreting or enforcing the contract or requiring or permitting that any dispute under the contract be resolved in the courts of any state other than Virginia;
7. Requiring any total or partial compensation or payment for lost profit or liquidated damages by the Commonwealth if the contract is terminated before its ordinary period;
8. Requiring that the contract be "accepted" or endorsed by the home office or by any other officer subsequent to execution by an official of the Commonwealth before the contract is considered in effect;

9. Delaying the acceptance of this contract or its effective date beyond the date of execution;
10. Limiting or adding to the time period within which claims can be made or actions can be brought;
11. Limiting the liability of the Contractor for property damage or personal injury. The parties agree that this clause does not extend the Contractor's liability beyond its own acts or those of its agents/employees;
12. Permitting unilateral modification of this contract by the Contractor;
13. Binding the Commonwealth to any arbitration or to the decision of any arbitration board, commission, panel or other entity;
14. Obligating the Commonwealth to pay costs of collection or attorney's fees;
15. Granting the Contractor a security interest in property of the Commonwealth;
16. Bestowing any right or incurring any obligation that is beyond the duly granted authority of the undersigned agency representative to bestow or incur on behalf of the Commonwealth.
17. Requiring the "confidentiality" of the agreement, in whole or part, without (i) invoking the protection of Section 2.2-4342F of the Code of Virginia in writing prior to signing the agreement (ii) identifying the data or other materials to be protected, and (iii) stating the reasons why protection is necessary.
18. Requiring the Commonwealth to reimburse for travel and living expenses in excess of the agency policy located at <https://www.jmu.edu/financemanual/procedures/4215mie.shtml>

This contract has been reviewed by staff of the agency. Its substantive terms are appropriate to the needs of the agency and sufficient funds have been allocated for its performance by the agency. This contract is subject to appropriations by the Virginia General Assembly.

IN WITNESS WHEREOF, the parties have caused this contract to be duly executed, intending thereby to be legally bound.

**AGENCY by** \_\_\_\_\_

**CONTRACTOR by** \_\_\_\_\_

**Title** \_\_\_\_\_

**Title** \_\_\_\_\_

**Printed Name** \_\_\_\_\_

**Printed Name** \_\_\_\_\_

*April, 2017*

**ATTACHMENT G**  
**AGREEMENT**  
**PUBLICLY ACCESSIBLE CONTRACT (PAC)**

This Agreement, effective the [DAY<sup>st/nd</sup>] day of [MONTH, YEAR], is by and between James Madison University (the “University”), on behalf of the Virginia Higher Education Procurement Consortium (the “Consortium”) (collectively the "University"), and [VENDOR NAME], (“Vendor”).

**TERM**

The term of this Agreement is until [Date]. This end date coincides with the Primary Agreement’s end date.

**WITNESS**

WHEREAS, the University and Vendor have executed an agreement, UCPJMXXXX, dated MONTH XX, 20XX (the “Primary Agreement”), and included in the Primary Agreement is a third-party access / cooperative clause. Now therefore, the University and Vendor wish to express in this Agreement the specific terms that will allow third party access to the Primary Agreement.

Accordingly, and in consideration of the mutual premises and provisions hereof, the parties hereby agree as follows:

**I. Vendor will:**

- A. Pay the University 1% of all sales to accessing entities outside of the Consortium membership associated with the Primary Agreement (as the “PAC Annual Fee”). The PAC Annual Fee will be paid in exchange for marketing services provided by the University and the Consortium described below in Section II.
- B. Fully support this marketing relationship by promoting the availability of the Primary Agreement to non-Consortium entities;
- C. Provide quarterly sales reports detailing the amount of sales to each non-Consortium accessing entity; and

**II. The University/Consortium will:**

- A. Promote the Primary Agreement on its website and through other channels (e.g., conferences) to non-Consortium members
- B. Maintain an approved version of Vendor’s logo on the Consortium website

**III. Payment:**

- A. Payment of PAC Annual Fee will arrive at the University no later than \_\_\_\_\_ of each year. The University and Consortium will share the payments equally and allocate payments to the appropriate accounts.
- B. In the event of early termination of the Primary Agreement, this residual payment will arrive at the University no later than 45 calendar days from termination date of the Primary Agreement.
- C. Payment of PAC Annual Fee will take the form of a check. Checks will be made payable to the University of Virginia and sent to:

Procurement Services  
c/o Director of Procurement  
James Madison University  
752 Ott Street, MSC 5720

IV. Notices:

Any notice required or permitted to be given under this Agreement will be in writing and will be deemed duly given: (1) if delivered personally, when received; (2) if sent by recognized overnight courier service, on the date of the receipt provided by such courier service; (3) if sent by registered mail, postage prepaid, return receipt requested, on the date shown on the signed receipt: or (4) if sent by electronic mail, when received (as verified by the email date and time) if delivered no later than 4:00 p.m. (receiver's time) on a business day or on the next business day if delivered (as verified by sender's machine) after 4:00 p.m. (receiver's time) on a business day or on a non-business day. All such notices will be addressed to a party at such party's address or facsimile number as shown below.

If to the University:

Procurement Services  
c/o Director of Procurement  
James Madison University  
752 Ott Street, MSC 5720  
Harrisonburg, VA 22807

If to Vendor:

[Vendor Contact]  
[Vendor]  
[Address]  
Email: [\[Vendor Email\]](#)  
Fax: [Fax]

**ACCEPTANCE**

**For James Madison University**

**For [Vendor]**

\_\_\_\_\_  
[Lead Proc]  
[Lead Job Title]

\_\_\_\_\_  
[Vendor Contact]  
[Vendor Contact Title]

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Agreement #: [JMU Contract-Number]-PAC